IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 4 of 1992

Decided on: 5.7.2010.

H.P. State Electricity Board and another ..... Petitioners.

Versus

Presiding Officer, Labour Court and & others.... Respondents.

Coram

The Hon'ble Mr. Justice Kurian Joseph, Chief Justice

The Hon'ble Mr. Justice Kuldip Singh, Judge.

For the petitioner(s) : **Mr. Tarlok Jamwal, Advocate.**

For the respondents : **Mr. R.D. Kaundal, vice Mr. A.K. Gupta, Advocate, for respondents No. 2 to 20.**

Justice Kurian Joseph, C.J. (Oral):

The issues raised in this writ petition pertains to the claim made by the daily waged workers in the H.P. State Electricity Board for bonus. The very same issues have been considered by this Court on 6.4.2010 in CWP No.546 of 1993 with connected cases. The text of the judgment reads as follows:-

> "The issue raised in these writ petitions pertains to the claim made by the daily waged workers in the H.P. State Electricity Board and H.P. State Forest Corporation and similar public sector undertakings. It appears the workers had straightaway approached the Labour Court under Section 33(C)(2) of the Industrial Disputes Act and the Labour Court had allowed those applications. The public sector undertakings challenged the same before this Court. Except in two cases, where there were disputes on facts, the writ petitions were dismissed and in those two cases i.e. CWP No.544 of 1993 and CWP No. 647 of 1998, it was made clear that it will be open to the workmen concerned to vindicate their grievances in appropriate forum. The public sector undertakings pursued the matter before the Supreme Court leading to the judgment dated 5th March, 2008 in Civil Appeal No.7056 to 7065 of 2001. The judgment of this Court was set aside and the matters were remanded to this Court to decide the following three aspects:
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> 1. The applicability of Section 33(C)(2) of the Act;
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> 2. Jurisdiction of the Labour Court to decide the matter; and
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> 3. Applicability of Bonus Act to the daily wagers.

1). <u>The applicability of Section 33(C)(2) of the Act</u>;

As far as the applicability of Section 33(C)(2) of the Act is concerned, no doubt, the Section provides for computation of an existing benefit. The Section reads as follows:-

> "Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of

money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government [within a period not exceeding three months]

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.]"

Section 8 of the Payment of Bonus Act, 1965

provides for eligibility for bonus, which reads as follows:-

"Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year."

Employee is defined under Section 2(13) of the Act which reads as follows:-

"Employee" means any person (other than anapprentice) employed on a salary or wage not exceeding [three thousand and five hundred rupees] per mensem in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied;"

Section 10 provides for payment of minimum bonus which reads as follows:-

"Subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year

commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year:

Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this section shall have effect in relation to such employee as if for the words “one hundred rupees”, the words “sixty rupees” were substituted.”

The expression ‘salary’ or ‘wage’ is defined under Section 2(21) of the Act which reads as follows:-

“Salary or wage” means all remuneration (other than remuneration in respect of over-time work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living), but does not include-

(i) any other allowance which the employee is for the time being entitled to;

(ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;

(iii) Any travelling concession;

(iv) Any bonus (including incentive, production and attendance bonus);

(v) Any contribution paid or payable by the

employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;

(vi) Any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any *ex gratia* payment made to him;

(vii) Any commission payable to the employee.

Explanation:-Where an employee is given in lieu of the whole or part of the salary or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purpose of this clause, be deemed to form part of the salary or wage of such employee."

Section 20 provides for the application of Act to establishments in public sector which reads as follows:-

"(1) If in any accounting year an establishment in public sector sells any goods produced or manufactured by it or renders any services, in competition with an establishment in private sector, and the income from such sale or services or both is not less than twenty per cent of the gross income of the establishment in public sector for that year, then, the provisions of this Act shall apply in relation to such establishment in public sector as they apply in relation to a like establishment in private sector.

(2) Save as otherwise provided in sub-section (1), nothing in this Act shall apply to the employees employed by any establishment in public sector."

The provisions, as extracted above, would clearly show that the payment of Bonus Act 1965 does not make any difference as to whether an employee is a temporary, ad-hoc, permanent, daily wager etc. The only pre-condition for

entitlement is work in the establishment for not less than 30 days in that year. Of course, the question as to whether the Act would apply to a public sector undertaking in terms of Section 20, is a matter to be examined with reference to the factual matrix. The contention of learned counsel appearing for the writ petitioners is that whenever there is any dispute with regard to the bonus payable under the Act between the employer and employee, the same has to be referred as per Section 22 of the Payment of Bonus Act, 1965.

Section 22 reads as follows:-

"Where any dispute arises between an employer and his employees with respect to the bonus payable under this Act or with respect to the application of this Act to an establishment in public sector, then, such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), or of any corresponding law relating to investigation and settlement of industrial disputes in force in a State and the provisions of that Act or, as the case may be, such law, shall, save as otherwise expressly provided, apply accordingly." It has to be seen that the dispute between the employer and employee pertains only to the rate of bonus payable under the Act and the application of the Act. Therefore, it is clear that subject to the applicability of the Payment of Bonus Act and eligibility under Section 8 thereof, bonus is a benefit capable of being computed under Section 33(C)(2) of the Industrial Disputes Act. Since the main defence taken by the public sector undertakings before the Labour Court is that the workmen concerned are not entitled to bonus only on the ground of being daily waged workers, we

do not think that it is a fit case for reference since nothing survives for adjudication regarding the payability of the bonus under the Act.

2). Jurisdiction of the Labour Courts:

Labour Court is empowered under Section 7 of the Industrial Disputes Act for adjudication of the Industrial Disputes relating to matters specified in the second schedule and for performing such other functions as may be assigned to them under the Act. The second schedule item 6 reads as follows:

"All matters other than those specified in the third schedule."

Item 5 of the third schedule reads as follows:-

"Bonus, provident fund and gratuity."

Industrial Tribunals are established under Section 7(a) of the Industrial Disputes Act, 1947 for the adjudication of the Industrial disputes relating to any matter whether specified in the second schedule or third schedule. In view of the specific provision under third schedule dealing with the bonus, it is clear that the jurisdiction to decide the disputes pertaining to the bonus rests only with the Industrial Tribunals unless specifically and duly assigned such functions to the Labour Courts.

3). <u>Applicability of Bonus Act to the daily wagers:</u>

As we have already held above, the Payment of Bonus Act, 1965 does not make any distinction as to whether an employee is daily wager, temporary, permanent, weekly paid, monthly paid etc. The only pre-condition is that he should have worked in the establishment for not less than 30 working days in an accounting year. Subject to the above conditions, an employee is entitled to paid by his employer the bonus as provided under the Payment of Bonus Act, 1965 in case the establishment is covered under the Act.

We find that the employees concerned had not made any claim before the employers so as to give an opportunity to the employer concerned to examine the factual position either with regard to the entitlement under section 8 or with regard to the applicability of the Payment of Bonus Act under section 20. These questions are not addressed before the Labour Court also. We are informed that in the State of H.P., Labour Court has been notified as Industrial Tribunal as well. Be that as it may, since the workmen concerned have started their litigation in the year 1993, we do not think that another round of adjudication before the Industrial Tribunal should be called for in the instant cases.

The interest of justice would be met if the employer concerned is directed to examine the claim made by the respective workman in the light of the observations contained in this judgment and do the needful, particularly since we are informed that the bonus had been paid long back. Therefore, these writ petitions are disposed of as follows.

The employers will examine the cases in the light of the observations contained in this judgment and in case it is found that the Payment of Bonus Act applies to the establishment concerned and that the employee has satisfied the eligibility under section 8 of Payment of Bonus Act, the claim for minimum bonus under section 10 of the Act shall be decided and the benefits, if any, found eligible shall be disbursed, if not already disbursed within another two months. In case any employee is found ineligible he shall be issued notice before passing final orders.

In view of the judgment as above, the orders passed by the Labour Court and impugned in these writ petitions are set aside".

The issues raised in this writ petition being the same, it is disposed of in terms of the judgment referred to above.

(Kurian Joseph),
Chief Justice.

(Kuldip Singh),
Judge.

July 5, 2010
(sks/grs)